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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 ROBERT HENRY,

11 Petitioner,

No. CIV S-94-0916 JKS EFB P

12 vs.

13 CHARLES D. MARSHALL,

14 Respondent.

ORDER

15 _____/
16 Petitioner is a state prisoner seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. He
17 proceeds *pro se* and *in forma pauperis*. *See* 28 U.S.C. § 1915. An evidentiary hearing in this
18 action is scheduled for April 20, 2009.

19 On March 23, 2009, the court received a letter from Assistant Federal Defender David M.
20 Porter, petitioner's former counsel, enclosing eight subpoenas for the evidentiary hearing (for
21 witnesses Charles Austin, also known as Charles Eichler; Mary Gardner; Jeffrey Taggart; T.J.
22 Hicks; Superior Court Judge Harry Kinnicutt; Alex Taggart; C. Kramer; and Cherry Taggart).
23 Because Mr. Porter is no longer attorney of record for petitioner, Mr. Porter requests that the
24 Court issue the subpoenas. Mr. Porter also requests that the Court have the United States

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1 Marshal serve the subpoenas on the witnesses¹ and requests that the Court order the Marshal to
2 issue checks to each of the subpoenaed witnesses to cover one day's attendance and mileage.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The Clerk of the Court is directed to file a copy of the March 23, 2009 letter from Mr.
5 Porter, along with the attached subpoenas for Charles Austin, also known as Charles Eichler;
6 Mary Gardner; Jeffrey Taggart; T.J. Hicks; Superior Court Judge Harry Kinnicutt; Alex Taggart;
7 C. Kramer; and Cherry Taggart;

8 2. The Clerk of the Court is directed to issue the attached subpoenas and forward them,
9 along with a copy of this order, to the United States Marshal; and

10 3. Within five days from the date of receipt of the issued subpoenas, the United States
11 Marshal shall serve each of the subpoenas, along with a copy of this order, on the individuals
12 referenced therein, in accordance with the provisions of Fed. R. Civ. P. 45 and 28 U.S.C.
13 § 566(c).²

14 DATED: March 26, 2009.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

21 ¹ Although Mr. Porter offers to have an investigator from the Federal Defender's Office
22 serve six of the eight subpoenas, the Federal Defender no longer represents petitioner.
Therefore, it is more appropriate for the U.S. Marshal to serve the subpoenas.

23 ² Although Mr. Porter requests that the Court order the Marshal at this time to issue
24 checks to each of the subpoenaed witnesses to cover one day's attendance and mileage, "Fees
25 and mileage need not be tendered to a witness . . . upon service of a subpoena issued on behalf of
26 a party authorized to proceed in forma pauperis, if the payment of such fees and mileage is to be
made by the United States marshal under this section." 28 U.S.C. § 1825(c). After the
subpoenaed witnesses appear at the evidentiary hearing, "the United States marshal for the
district shall pay, on the certificate of the . . . judge, all fees of [those] witnesses." *Id.* § 1825(b).